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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/489,974 01/24/00 SUGIYAMA

M USUI-12G

IM62/0616

EXAMINER

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274 Madison Avenue  
Suite 1703  
New York NY 10016

COY, N

ART UNIT	PAPER NUMBER
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1742

DATE MAILED:

06/16/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/489,974	SUGIYAMA, MOTOHARU
	Examiner	Art Unit
	Nicole Coy	1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

1) Responsive to communication(s) filed on 24 January 2000.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-5 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some \* c) None of the CERTIFIED copies of the priority documents have been:

1. received.
2. received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

18) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

19) Notice of Informal Patent Application (PTO-152)

20) Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sexton et al.

Sexton et al. discloses the invention substantially as claimed. Sexton et al. discloses a homogenous, ductile brazing filler metal composed of 0 to 21 atom percent Cr (0-24 wt %), 0 to about 19 percent Si (0-13 wt %), 0 to about 22 atom percent phosphorus (0 – 15 wt. %), and the balance nickel and incidental impurities (abstract).

However, Sexton et al. does not disclose the exact composition as in claims 1 and 4.

Since, Sexton et al. discloses the composition of the brazing filler metal in which the components and ranges meet or overlap those being claimed, the disclosure establishes a *prima facie* case of obviousness. *In re Malagari*, 182 USPQ 529.

3. Claim 2 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Sexton et al.

Sexton et al. discloses the invention substantially as claimed (see paragraph 2 above).

However, Sexton et al. does not disclose wherein the total composition is formed from the mixture of two compositions.

The formation of the full composition by simply mixing two compositions of powder is immaterial.

Actual overlap of all ingredients in prior art is not required; mere contact (i.e. end-point touching) or CLOSE APPROXIMATION is sufficient to establish prima facie case of obviousness; Titanium Metal Corp v. Banner, (CAFC 1985) 778 F2d 775, 227 USPQ 575.

4. Claims 3 and 5 are rejected over Sexton et al. in view of Takikawa et al.

Sexton et al. discloses the invention substantially as claimed (see paragraph 2 above).

However, Sexton et al. does not disclose using the brazing filler metal for an EGR cooler.

Takikawa et al. teaches a EGR cooler brazed with a brazing filler in the same field of endeavor for the purpose of protecting against the degradation of the durability of the EGR cooler.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the highly ductile brazing filler metal of Sexton et al. to braze an EGR cooler in order to prevent the degradation of the durability of the EGR cooler.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole Coy whose telephone number is (703)308-3860. The examiner can normally be reached on Monday-Friday 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (703) 308-1146. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-7719 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0651. ~

*Nicole Coy*  
nac  
June 14, 2000

*DJL*  
Daniel J. Jenkins  
Primary Examiner